

111

9047
S.C.

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, COMPLAINANT,

vs.

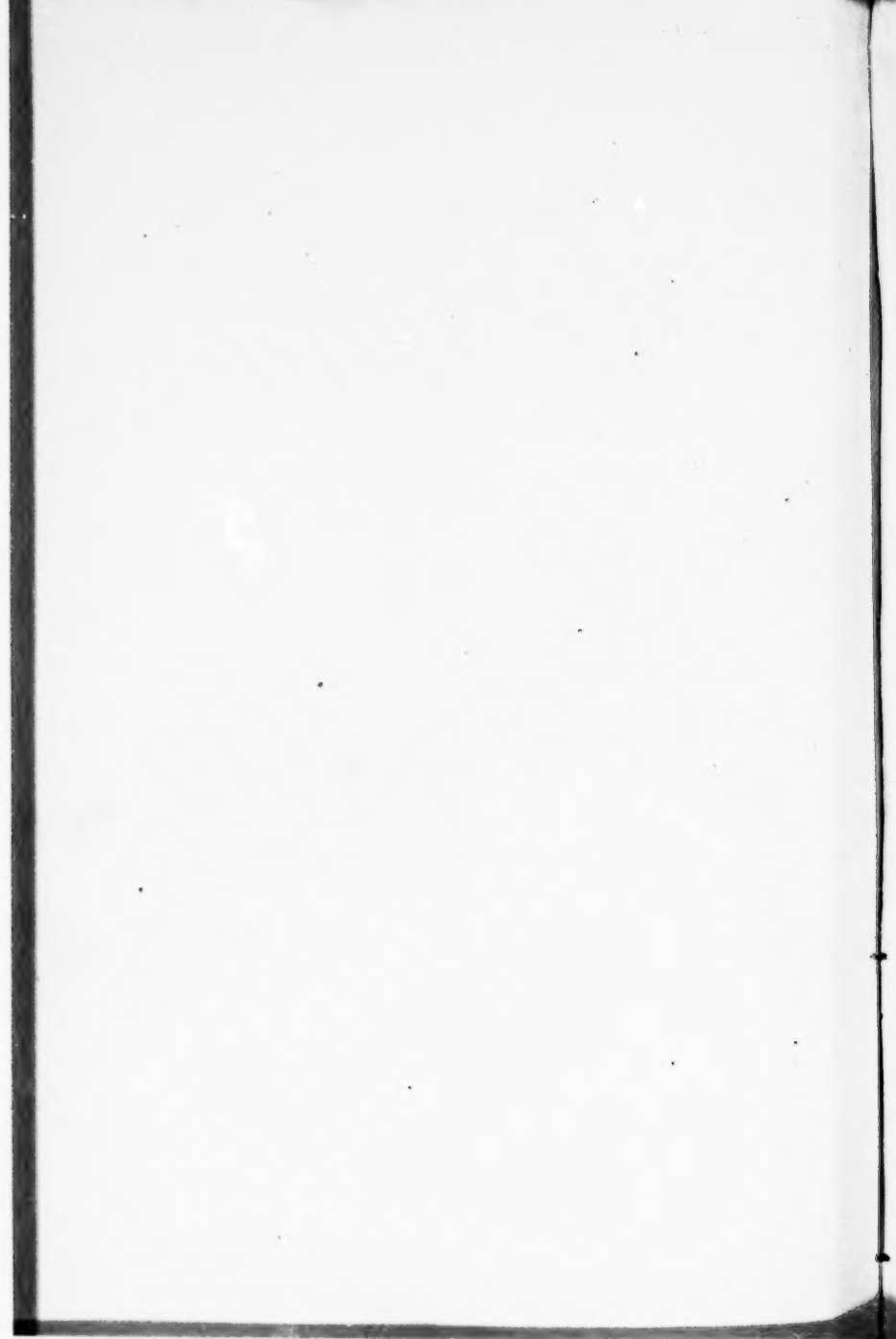
THE STATE OF NEW JERSEY ET AL., DEFENDANTS.

MOTION TO FILE ORIGINAL BILL

and

ORIGINAL BILL OF COMPLAINT.

EDWARD HOLLANDER,
Attorney for Complainant.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, COMPLAINANT,

vs.

THE STATE OF NEW JERSEY ET AL., DEFENDANTS.

MOTION TO ~~FILE~~ ORIGINAL BILL.

Now comes William Duhne, through his attorney, Edward Hollander, and moves the Court for leave to file the bill of complaint herewith exhibited, in a controversy which has arisen between the complainant and the defendants with regard to the enforcement of the Eighteenth Amendment to the Constitution of the United States and the act of Congress of October 28, 1919, known as the National Prohibition Act, and that proper process may issue thereon, notifying the defendants and each of them that such a bill has been filed and that said defendants and each of them may appear and defend same.

WILLIAM DUHNE,
By EDWARD HOLLANDER,
Attorney.



IN THE
SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

WILLIAM DUHNE, COMPLAINANT,

against

THE STATE OF NEW JERSEY, A. MITCHELL
PALMER, ATTORNEY GENERAL OF THE UNITED STATES;
JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND
FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C.
ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE
UNITED STATES, DEFENDANTS.

BILL OF COMPLAINT.

*To the Honorable the Justices of the Supreme Court of the
United States:*

The complainant for his bill of complaint herein, by Edward Hollander, his solicitor, respectfully **alleges** as follows:

I.

The complainant is a citizen of and a resident of the State and district of New Jersey.

II.

The State of New Jersey is a sovereign State and one of the United States of America.

III.

The defendant A. Mitchell Palmer is the Attorney General of the United States of America.

IV.

The defendant Joseph L. Bodine is the United States attorney in and for the district of New Jersey.

V.

The defendant Daniel C. Roper is the Commissioner of Internal Revenue of the United States of America.

VI.

The complainant is and has been for many years engaged in the business of selling at retail beer, wine, and other malt, vinous, and spirituous liquors and intoxicating liquors, for beverage purposes at No. 5160 Hudson Boulevard, in the town of West New York, county of Hudson, State and district of New Jersey, and purposes and intends to continue said business for a further period of many years at said address. He has conducted his business aforesaid under and in accordance with licenses duly had and obtained from the State of New Jersey and from the United States of America, respectively.

VII.

On or before the 19th day of December, 1917, the Congress of the United States adopted a joint resolution proposing an amendment to the Constitution of the United States in words and figures as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following amendment to the Constitution be and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:

"ARTICLE * * *

"Section 1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

"Section 3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.'"

VIII.

The resolution aforesaid was not adopted by the vote of two-thirds of both houses of the Congress aforesaid, that is to say, two-thirds of the members chosen every second year in

the House of Representatives by the people of the several States, and two-thirds of the Senators elected by the people of the several States; but nevertheless it was communicated to the legislatures thereof, and thereafter and at divers times between the said 19th day of December, 1917, and the 28th day of October, 1919, the legislatures of all the States in the Union, except the States of Connecticut, New Jersey, and Rhode Island, adopted resolutions purporting to ratify and adopt the resolution of Congress aforesaid as an amendment to, and a part of, the Constitution of the United States, but the said States of Connecticut, New Jersey, and Rhode Island, have hitherto refused to adopt any such resolution.

IX.

If the proposed amendment aforesaid had been lawfully proposed by the Congress and ratified by the legislatures of the several States it would have been and become, and would now be, the Eighteenth Amendment to the Constitution of the United States.

X.

Your petitioner is further advised by counsel and verily believes, and upon such information and belief alleges, that neither the people of the United States, nor any of them, nor their representatives in Congress assembled, nor any of them, nor the peoples of the several States, nor any of them, nor their representatives in the several legislatures thereof assembled, nor any of them, ever had, or now have, any authority or lawful power to propose, ratify or adopt the so-called Eighteenth Amendment to the Constitution of the United States, and that the said so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, as an amendment to the Constitution of the United States of America, as will more particularly appear from the following

enumeration of the limitations upon their several powers which impliedly but necessarily exist and inhere in the federal and the republican form of the governments of the United States and of the several States, and of the limitations upon their said several powers, which have been expressly declared and ordained by the peoples of the United States and the several States in their several Federal and State constitutions.

LIMITATIONS.

Impliedly But Necessarily Existing in the Federal Form of Government.

A.

In a federal union of sovereign States the sovereign rights, liberties and powers of the several States are wholly reserved to the States, except in so far as they may be expressly prohibited to the States or delegated to the Union by the covenant of union, and the sovereign rights, liberties, and powers so reserved cannot be taken, impaired or abridged, and the covenant of union cannot be so amended as to take, impair or abridge them, without the unanimous consent of each and all of the States so federated. Until unanimous consent is so obtained, as aforesaid, the covenant of union is not so amended, even as to the consenting States, by any act of any number of the members of the union, even the largest majority.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign rights, liberties and powers of the several States of the United States, in that it assumes to enable the United States to exercise sovereign powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

LIMITATIONS

Impliedly But Necessarily Existing in a Republican Form of Government.

B.

Absolute and arbitrary power over the rights and liberties of the people exists nowhere in a republic, not even in the largest majority. Each and all of the people thereof possess and enjoy certain natural and inherent rights and liberties which are inalienable by their own act and which cannot be taken from them without their consent by the act of others. In uniting to form a republic the people do not surrender, waive, or in anywise diminish, either their rights or their liberties. On the contrary, a republican form of government is formed and exists solely for the purpose of protecting them in the enjoyment thereof. In a republic, therefore, the natural and inherent rights and liberties of the people are necessarily excepted out of the general powers of government and remain at all times indestructible.

Among the rights and liberties so possessed, reserved and enjoyed by the people in a republic are these:

1. The liberty to use their natural powers and to gratify their natural desires in the pursuit of happiness, in so far as injury to others shall not result therefrom;
2. The right to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question (due process of law);

3. The right to be justly compensated when their private property is taken, or destroyed, or in anywise injured or impaired, for a public purpose or for the public benefit.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties herein enumerated, in that it assumes to deprive all the people of the United States and of the several States thereof of the liberty to use alcoholic beverages in moderation and sobriety and under circumstances in which no injury results, or can result, to others therefrom, and in that it assumes to deny to all the people of the United States and of the several States thereof the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and in that vast investments of private property lawfully made by many of the people in the production and distribution of alcoholic beverages, and oftentimes made by them under the express sanction and license of the people of the United States and of the several States thereof, will be injured, impaired, or utterly destroyed for an alleged public benefit without any compensation whatsoever.

By reason of the premises the so-called Eighteenth Amendment is beyond any lawful power or authority (*ultra vires*) resident in the people of the United States, or in the peoples of the several States thereof, or even in the largest majority thereof, and is, therefore, null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

C.

In a republic the legislators thereof are the trustees and servants of the people whom they represent, and possess no powers which are not possessed by the people themselves.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights hereinbefore and in paragraph B enumerated, and is therefore in excess of the powers of the people of the United States and of the peoples of the several States.

By reason of the premises the act of the Senators and members of the House of Representatives of the Congress of the United States in assuming to propose, and the act of the legislators of the several States in assuming to ratify, the so-called Eighteenth Amendment, being in excess of the powers of the people of the United States and of the peoples of the several States thereof, was in excess of their own delegated powers, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

D.

In a republic the legislators thereof are the trustees and servants of the people and act only with a delegated authority. No arbitrary or absolute powers of government are delegated to them, and no power is delegated to them to injure, impair, or abridge the natural and inherent rights of the peoples whose delegates they are. In particular no power or authority is delegated to them to injure, impair, or abridge the natural and inherent rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

By reason of the premises the act of the several members of the Congress of the United States and of the several legislators of the several States in assuming to propose and ratify the so-called Eighteenth Amendment and thereby to injure, impair and abridge the natural and inherent rights of the peoples whom they represented was beyond their lawful power and delegated authority (*ultra vires*) and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed, ratified, or adopted by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

E.

In a republic, wherein the Constitution is written and adopted by the people, the sole power to change their form of government resides solely in the people, and the legislators thereof are clothed with no power or authority, implied or otherwise, to impair or surrender in any particular the lawful and sovereign powers of the several States which they severally represent.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign powers possessed by the several States, in that it assumes to authorize the United States to exercise sovereign powers of internal government and police within their territorial jurisdiction, and to that extent assumes to operate as a surrender by the several States to the United States of a portion of their sovereign powers.

By reason of the premises the act of the legislators of the several States of the United States, wherein all the constitutions have been written and adopted by the people, in assuming to ratify the so-called Eighteenth Amendment, surrender to the United States the sovereign power to regulate in part the internal government and police of the several States

of the Union, was in excess of their lawful power and authority (*ultra vires*) and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully ratified by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

**Limitations Expressly Declared and Ordained in the
Constitution of the United States.**

F.

The Fifth Article of amendment to the Constitution of the United States declares and ordains that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without just compensation, and the Ninth Article of amendment thereto declares and ordains that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The amendments aforesaid were proposed to the several States and were ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operate as, and have the lawful force and effect of, a limitation upon, and to that extent a repeal of, the powers created and conferred by the Constitution as originally ratified, including in particular the power to amend the Constitution as declared and ordained by the Fifth Article thereof.

The said articles of amendment also operate as, and have the lawful power and effect of, express guarantees of the faith of the people of the United States, and as such cannot be repealed, modified, or limited in any particular, but stand as perpetual guarantees and safeguards of all rights and liberties of the people of the United States expressly enumerated

in the Constitution aforesaid or expressly or impliedly reserved to the people.

Among the rights and liberties so guaranteed to the people of the United States are all the rights hereinbefore and in paragraph B enumerated, to which the so-called Eighteenth Amendment is repugnant and of which it is violative and destructive, as hereinbefore and in said paragraph B more fully set forth.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) now resident in the people of the United States, or now resident in the peoples of the several States, or now resident in the Senators or members of the House of Representatives of the United States, or the legislatures of the several States, in that it exceeds the power of amendment reserved in the Constitution, and in that it assumes to repeal the ir-repealable guarantees of the people of the United States, and is therefore null, void, and of none effect, in law or otherwise, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

G.

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall deprive any person of life, liberty or property without due process of law, and thereby operates as a limitation upon the power and authority of the several States and of the peoples and legislators thereof.

The so-called Eighteenth Amendment is repugnant to, and violative of, the right of the people of the United States and of the several States to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question, and therein

assumes to deprive them of their liberty and property without due process of law.

By reason of the premises, the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in their legislatures, and the attempted ratification thereof by the legislatures of the several States was and is null, void, and of none effect in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

H.

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Among the privileges and immunities of citizens of the United States are the rights guaranteed to them and protected by the Fifth Article of amendment to the Constitution and the Ninth Article of amendment to the Constitution, and include all the rights hereinbefore and in paragraph B hereof enumerated, and the so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights aforesaid.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in the legislatures thereof, and the attempted ratification thereof by the legislatures of the several States was and is null, void and of none effect, in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

I.

The Constitution of the United States in the third section of the Sixth Article thereof, requires the Senators and Representatives of the Congress of the United States and the members of the several State legislatures to be bound by oath or affirmation to support the Constitution of the United States, and thereby establishes the ultimate measure and limit of their lawful power and delegated authority.

The so-called Eighteenth Amendment is repugnant to, and subversive of, the sovereign powers of the several States and the natural and inherent rights and liberties of the people thereof, as declared and ordained in, and guaranteed by, the Constitution, and therefore the attempt to propose and ratify it as an amendment to the Constitution was an act, not in support of the Constitution, but in derogation and destruction of it and of the guaranties which it contains.

By reason of the premises the act of the several Senators and members of the House of Representatives of the Congress of the United States and of the several members of the legislatures of the several States in voting to propose the so-called Eighteenth Amendment to the States or to ratify it, was a violation of their oath of office, and in excess of their lawful power and delegated authority, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

J.

The Constitution of the United States in the fourth section of the Fourth Article thereof declares and ordains that

the United States shall guarantee to every State in the Union a republican form of government.

No State possesses a republican form of government in which any part of the people, even the largest majority, possesses absolute or arbitrary power over the lives, liberties, or property of any other part of the people thereof.

No State possesses a republican form of government in which the powers of the legislatures thereof exceed the powers of the people, or in which the legislators possess any powers other than those delegated to them by the people.

No State possesses a republican form of government in which the natural and inherent right of the people as hereinbefore and in paragraph B hereof enumerated may be lawfully injured, impaired or abridged.

The so-called Eighteenth Amendment is in excess of the powers of any part of the peoples of the several States, even the largest majority thereof, and in excess of the powers delegated to the several legislatures thereof, and assumes to impair and abridge all the natural and inherent rights of the peoples of the several States as hereinbefore and in paragraph B hereof enumerated, and as such is repugnant to, and violative of, the principles of a republican form of government, and is therefore in violation of the guarantee of the United States to the several States of a republican form of government.

By reason of the premises the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

K.

The Tenth Articles of amendment to the Constitution of the United States declares and ordains that the powers not delegated to the United States nor prohibited by it to the States, are reserved to the States respectively or to the people.

The amendment aforesaid was proposed to the several States and was ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operates as, and has the lawful power and effect of, an express guarantee of the faith of the people of the United States to the several States, and as such cannot be repealed or modified or limited without the unanimous consent of each and all of the States of the Union, even as to the consenting States, but stands as a perpetual guarantee and safeguard of all their sovereign powers not previously delegated to the United States or prohibited to the States respectively.

Among the sovereign powers not so delegated or prohibited is the sovereign power of internal government and police within their territorial limits.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void and of none effect, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

L.

The Constitution of the United States in Article Five thereof declares and ordains that the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments thereto. Two-thirds of both houses of Congress, that is to say, two-thirds of the members chosen every second year for the House of Representatives by the people of the several States and two-thirds of the Senators chosen from the several States, have not deemed it necessary to propose, and have not proposed, the so-called Eighteenth Amendment to the several States.

By reason of the premises the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States to the several States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

**Limitations Expressly Declared and Ordained in the
State Constitutions.**

M.

As will more particularly and at large appear by reference thereto, the peoples of the States of Kentucky and Wyoming in the constitutions of their respective States have declared and ordained that absolute and arbitrary power over the lives, liberty and property of the peoples thereof exists nowhere in their States, not even in the largest majority.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such is an exercise of absolute and arbitrary power over the lives, liberty and property of the peoples of the States aforesaid.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

N.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Ar-

kansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming, in the constitutions of their respective States, have declared and ordained that no person shall be deprived of life, liberty or property without due process of law.

The so-called Eighteenth Amendment is repugnant to, and violative of, the constitutional limitation aforesaid, in that it denies to the peoples of the several States aforesaid the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and therein assumes to deprive them of their liberty and property without due process of law.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

O.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, Delaware, Kentucky, North Dakota, Pennsylvania, Tennessee and Texas, in the constitutions of their respective States, have declared and ordained that the natural and inherent rights of the people are excepted out of the general powers of government and shall forever remain inviolate.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and assumes to include them within the general powers of government, and as such is a violation of the rights in the several constitutions of the States aforesaid excepted out of the powers of government and declared to be forever inviolate.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

P.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming, in the constitutions of their respective States, have declared and ordained that private property shall not be taken for a public use without just compensation.

The so-called Eighteenth Amendment assumes to take or impair the private property of the peoples of the several States for a public purpose or for the public benefit, in that vast investments of private property lawfully made in the production and distribution of alcoholic beverages, and oftentimes made under their express sanction and license,

will be injured, impaired or utterly destroyed for the alleged benefit of the people without any compensation whatsoever.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

Q

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, in the constitutions of their respective States have declared and ordained that all men are free and independent; that they are endowed with certain inalienable rights; and that among those rights are life, liberty and the pursuit of happiness.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural, inherent, and inalienable rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the peoples of the several States aforesaid of the rights and liberties so declared to be inalienable.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and

the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

R.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Utah, Virginia, Washington, and Wyoming, in the constitutions of their respective States have declared and ordained that the enumeration therein of certain rights shall not impair or deny others retained by the people.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the people of the States aforesaid of the rights and liberties so declared in their constitutions aforesaid to have been retained by them.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

S.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, California,

Colorado, Georgia, Idaho, Maryland, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Washington, West Virginia and Wyoming, in the constitutions of their respective States have declared and ordained that the provisions of the Constitution of the United States are the supreme law within their several States.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the guaranties of rights and liberties declared and ordained by the Constitution of the United States aforesaid, as hereinbefore and in paragraphs F to K hereof more particularly and at large set forth.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

T.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Vermont, Virginia, and West Virginia, in the constitutions of their respective States have declared and ordained that their representatives in their several legislatures assembled are the trustees and servants of the people and amenable to them.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties of the peoples of the several States aforesaid hereinbefore and in paragraph B hereof enumerated, and as such the act of the several legislatures aforesaid in attempting to ratify it was a betrayal of the rights of the peoples of the said

several States, and a breach of the fiduciary and representative obligations imposed upon them by the several constitutions aforesaid, and as such was in excess of the delegated powers conferred upon them.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

U.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Texas, Vermont and Washington, in the constitutions of their respective States, have declared and ordained that the people thereof have the inherent, sole and exclusive right of regulating their internal government and the police thereof.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial limits of the States aforesaid, and as such is repugnant to, and violative of, the inherent, sole and exclusive right of the peoples of the States aforesaid to regulate the internal government and police thereof.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitu-

tions of the said States contained to the contrary thereof in anywise notwithstanding.

V.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, Arkansas, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Washington, in the constitutions of their respective States have reserved to themselves the power within a certain time and at their option to approve or reject at the polls any act of the legislature, and, by reason thereof, until the peoples of the States aforesaid exercise the option so reserved by them, or allow the time reserved therefor to cease and determine, no act of any legislature of the States aforesaid is lawfully complete or operative.

The proclamation and certificate made, issued and published on the 29th day of January, 1919, by Frank L. Polk, as acting Secretary of State of the United States, exercising the powers of that office in the place and stead of Robert Lansing, Secretary of State, who on the day aforesaid was absent from the United States, was made, issued and published before the peoples of the several States aforesaid had exercised their option to reject at the polls the act of their legislatures in ratifying the so-called Eighteenth Amendment and before the time reserved by them for exercising their option had ceased or determined.

By reason of the premises the ratification by the legislatures of the States aforesaid of the so-called Eighteenth Amendment was not, and had not then become, lawfully complete or operative as an act of ratification, and the certificate of proclamation of said Frank L. Polk, acting Secretary of State as aforesaid, was contrary to the law and the fact, and null, void, and of none effect, in law or otherwise.

XI.

Prior to the 28th day of October, 1919, a bill entitled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," which had theretofore passed the House of Representatives and the Senate, and which was intended to enforce the so-called Eighteenth Amendment aforesaid, was presented to the President of the United States for his approval, but the President returned it with his objections to that house in which it originated, to wit, the House of Representatives.

XII.

Thereafter, but still prior to the 28th day of October, 1919, the House of Representatives, after having entered the objections of the President at large on their journal, proceeded to reconsider it, but after such reconsideration two-thirds of that house, to wit, two-thirds of the members chosen therefor every second year by the people of the several States, failed to agree to pass the bill, but nevertheless it was sent with the President's objections to the other house, to wit, the Senate, by which it was on the 28th day of October, 1919, reconsidered and approved by two-thirds of that house, to wit, two-thirds of the Senators from each State, elected by the people thereof.

XIII.

In and by the bill aforesaid it is provided that no person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States, that is to say, the

so-called Eighteenth Amendment hereinbefore set forth at large, goes into effect, manufacture, sell, barter, transport, export, deliver, furnish, or possess any intoxicating liquor except as therein authorized, and the said bill contains numerous other intended provisions of law, both civil and criminal, looking to the enforcement of its prohibitions aforesaid.

XIV.

The complainant is advised by counsel and verily believes, and on such information and belief alleges, that the bill aforesaid was not within the lawful power or authority of the Congress of the United States to enact and never became and is not now a law.

XV.

In and by the bill aforesaid, the defendants and each of them were and are charged with the duty of enforcing its provisions within the State of New Jersey and the district of New Jersey, and the defendants A. Mitchell Palmer and Joseph L. Bodine and each of them are charged with the duty of enforcing within the State of New Jersey and the district of New Jersey the civil and criminal law of the United States of America in so far as it is prescribed and regulated by the terms and provisions of the several statutes of the United States of America.

XVI.

The defendants and each of them, except the defendant, the State of New Jersey, threaten and are about to enforce against the complainant and his agents and employees the terms and provisions of the bill aforesaid, to subject the complainant and his agents and employees to criminal prosecution, to seize, confiscate, and destroy certain property of

complainant, including alcoholic liquors now in his possession and belonging to him, to take proceedings to have the premises occupied by complainant in his business as aforesaid declared a common nuisance, to obtain an injunction against said premises and this complainant, restraining and enjoining him from engaging in his said business at said premises and to prevent complainant and his agents and employees from engaging in and pursuing the said business of selling alcoholic and intoxicating liquors at retail at such premises, and in other respects to interfere with complainant and his agents and employees in the transaction of said business, and to wholly prevent complainant, his agents and employees from operating and continuing said business at said premises.

XVII.

There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

XVIII.

The enforcement of the bill aforesaid or of the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, and even the mere attempt to enforce either of them, by the defendants or any of them will cause direct and irreparable loss of property and damage to the complainant and to his property rights in that it will prevent

him from continuing his said business, will frighten and terrorize his employees and others so that it will be impossible for him to obtain new employees, will cause him to lose his customers and the profits he could make on sales of his goods, will destroy the good-will of his said business, will depreciate and destroy the value of his property, including the licenses heretofore paid for and obtained by him from the United States and from the State of New Jersey, and otherwise will cause him irreparable loss and damage for which he will have no adequate or sufficient remedy at law or otherwise.

XIX.

The complainant has in his possession a large and valuable stock of merchandise consisting of alcoholic and intoxicating liquors worth several thousand dollars, on which he has paid a stamp tax and other taxes of the United States of America, all of which will be rendered valueless unless the defendants and each of them are at once enjoined as prayed herein.

XX.

Unless the defendants and each of them are restrained from bringing proceedings against the complainant, his agents and employees, to enforce the act of Congress aforesaid and the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, many actions and proceedings will result and will be brought, in all of which actions and proceedings the constitutionality and validity of the said act of Congress of October 29, 1919, and of the said alleged Eighteenth Amendment to the Constitution of the United States must be determined, which issue can and will be most properly and finally decided in this action.

XXI.

The complainant has no adequate or sufficient remedy at law or equity or otherwise in the premises.

To the end, therefore, of avoiding a multiplicity of suits and in order that the complainant may obtain relief in the premises from this honorable Court, where alone adequate relief can be awarded, he prays:

1st. That the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, may be made defendants to this bill of complaint, and in this proceeding, and compelled to answer the bill of complaint herein, but not under oath, an answer under oath being hereby expressly waived, and every material allegation thereof, as fully and to the same extent as if they and each of them were directly and particularly interrogated as to such allegations.

2nd. That a writ of injunction issue out of and under the seal of this Court restraining and enjoining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, from in any manner enforcing, or attempting to enforce, or causing, permitting or suffering to be enforced, against the defendant, his agents, servants and employees, or any of them, or against any of his property, directly or indirectly,

any of the terms or provisions of the so-called Eighteenth Amendment to the Constitution of the United States, and of the bill to enforce the provisions thereof hereinbefore referred to, and from arresting or prosecuting the complainant or his agents, servants or employees for or on account of any alleged violation by them or any of them, of the terms or provisions of said so-called Eighteenth Amendment to the Constitution of the United States, or of said bill, or either of them, and from filing any information or causing any indictment to be presented against the complainant, his agents, servants or employees, and from in any manner or to any extent seizing, attempting or causing or suffering or permitting to be seized, or otherwise interfered with, the property, business or affairs of the complainant, and from in any manner interfering with the occupation by complainant, his agents, servants and employees or any of them, of the premises at which the complainant is conducting his said business as aforesaid, or any other place within the State of New Jersey at which the complainant, his agents, servants, and employees, may lawfully be conducting the said business, and from using or attempting to use the name or authority of the United States of America or of the State of New Jersey in any proceedings at law or in equity against the complainant in any court of the United States or any court of the State of New Jersey, or either of them, for or on account of any alleged violation of the provisions of said so-called Eighteenth Amendment to the Constitution of the United States or said bill, or either of them.

3rd. That pending this litigation a temporary writ of injunction, restraining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States Attorney in and for the District of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United

States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, issue as prayed for herein.

4th. That complainant may have such other and further relief as the nature of the case may require and as may be in accordance with equity and good conscience.

5th. That complainant may have not only the writ of injunction conformable to the prayer of this bill, but also that the due process of this Court may issue herein, directed to the said defendants and each of them, directing them and each of them to appear and answer this bill of complaint and to submit themselves to the jurisdiction of this Court, and to do and receive what shall in the premises be just and equitable and to comply in all respects with the orders and directions of this honorable Court in the premises.

EDWARD HOLLANDER,

Solicitor for Complainant,

8 Bergenline Avenue, Union Hill, New Jersey.

EVERETT V. ABBOT,

GEORGE W. TUCKER,

BENJAMIN TUSKA,

Of Counsel.

STATE OF NEW JERSEY,

County of Hudson, ss:

William Duhne, being duly sworn, deposes and says that he is the complainant in the above-entitled action in equity; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be al-

leged on information and belief, and that as to those matters he believes it to be true.

WILLIAM DUHNE.

Sworn to before me this 15th day of December, 1919.

OTTO A. GRIESBACH,

[SEAL.]

Notary Public of N. J.

[Endorsed:] In the Supreme Court of the United States. William Duhne, complainant, against The State of New Jersey, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States, defendants. Bill of complaint. Edward Hollander, solicitor for complainant, 8 Bergenline Avenue, Union Hill, New Jersey.

(489)

FILE COPY

Supreme Court of the United States.

OCTOBER TERM, 1919.

No.	Original.
-----	-----------

In Equity.

WILLIAM DUHNE, Complainant,
against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

On Rule to Show Cause why leave should not be granted
to file original Bill of Complaint.

SPECIAL APPEARANCE OF THE STATE OF NEW JERSEY, ON
RETURN OF RULE TO SHOW CAUSE.

THE STATE OF NEW JERSEY,
By THOMAS F. McCran,
Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. Original.

In Equity.

WILLIAM DUHNE, Complainant.

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

SPECIAL APPEARANCE OF STATE OF NEW JERSEY, ON
RETURN OF RULE TO SHOW CAUSE FOR LEAVE TO
FILE BILL OF COMPLAINT.

Now comes the State of New Jersey, by Thomas F. McCran, Attorney-General thereof, in obedience to the command of a rule to show cause made on the twenty-second day of December, nineteen hundred and nineteen, appearing specially and solely for the purpose of objecting to the jurisdiction of this court as to the State of New Jersey, a party defendant, and asks that permission to file said original bill of complaint against the State of New Jersey be denied, and rests its request upon the following grounds:

I. The bill of complaint discloses that the complainant is a citizen of the State of New Jersey, and is, therefore, barred from instituting an action against the State of New Jersey without its consent.

II. The consent of the State of New Jersey to the filing of said bill or the institution of this action has not been granted by said State, and said State refuses to consent thereto.

III. This Honorable Court is without jurisdiction over the State of New Jersey in the premises.

GENERAL STATEMENT.

The State of New Jersey has been served with a rule to show cause why a motion for leave to file a bill of complaint in the Supreme Court of the United States on behalf of the complainant above and against the defendants named above, including the State of New Jersey, should not be granted. This is an original bill in the Supreme Court. In substance, it alleges that the complainant, who is engaged in the business of selling liquor at West New York in the State of New Jersey, will be injured by the enforcement of the Eighteenth Amendment of the Constitution of the United States and the act of Congress entitled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," and prays the court to restrain, by injunction, the defendants and each of them from doing anything to enforce the said amendment and the said statute. The State of New Jersey is named as a party defendant in its sovereign capacity. The bill prays that process may be directed to and an injunction issued against the State. The complainant sets forth in said complaint that he is a citizen of the State of New Jersey.

The bill of complaint, therefore, presents this state of facts: A citizen of the State of New Jersey requests the Supreme Court of the United States, in the exercise of its

original jurisdiction, to entertain a suit against the State of New Jersey, without the consent of said State.

Mr. Justice Miller, in *Cunningham v. Macon and New Brunswick Railroad*, 109 U. S. 446, 451, says:

"It may be accepted as a point of departure unquestioned that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution."

It is respectfully urged that this case is not within the exception.

POINT 1.

THE STATE OF NEW JERSEY CANNOT COMPULSORILY BE MADE A SUITOR IN AN ORIGINAL ACTION IN THE SUPREME COURT OF THE UNITED STATES INSTITUTED BY A CITIZEN OF SAID STATE.

The pertinent parts of the Constitution are as follows:

Article III.

Section 1.

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. * * *

Section 2.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or

which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

In *Louisiana v. Texas*, 176 U. S. at page 16, the Court says:

"The language of the second clause of the second section of Article III of the Constitution, 'in all cases in which a State shall be a party' means in all the enumerated cases in which a State shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties and is confined to the cases in which are those enumerated parties and those only."

The above quoted provisions of the Constitution were modified by the Eleventh Amendment as follows:

"The judicial power of the United States shall not be construed to extend to any suit in law or

equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

In *California v. The Southern Pacific Company*, 157 U. S. 229, Chief Justice Fuller, in his ~~dismissing~~ opinion uses the following language:

"If by virtue of the subject matter, a case comes within the judicial power of the United States, it does not follow that it comes within the original jurisdiction of this court. That jurisdiction does not obtain simply because a State is a party. Suits between a State and its own citizens are not included within it by the Constitution."

A suit directly against a State by one of its own citizens is not one to which the judicial power of the United States extends, unless a State itself consents to be sued.

Hans v. Louisiana, 134 U. S. Rep. 1.

North Carolina v. Temple, 134 U. S. Rep. 22.

Fells vs McShae, 172 U. S. 516-524

In *Osborn v. The Bank of the United States* (9 Wheat. Reports, p. 846), Chief Justice Marshall says:

"In cases where a State is a party on the record, the question of jurisdiction is decided on inspection."

LEAVE TO FILE THE BILL OF COMPLAINT AGAINST THE
STATE OF NEW JERSEY SHOULD BE DENIED.

THE STATE OF NEW JERSEY,
By THOMAS F. MCCRAN,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

WILLIAM DUHNE, COMPLAINANT,	} No. —, Original.
<i>v.</i>	
THE STATE OF NEW JERSEY et al., defendants.	

RESPONSE TO ORDER TO SHOW CAUSE.

In response to the order of the court to show cause, the defendants, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney for the District of New Jersey; and Daniel C. Roper, Commissioner of Internal Revenue, say that the bill wholly fails to state a case of which this court can take original jurisdiction.

I.

The bill is an effort to attack the validity of the eighteenth amendment to the Constitution, which is as follows:

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Congress, on October 28, 1919, passed an act known as the "Volstead Act," which provides, in detail, for the enforcement throughout the United States of this amendment.

The plaintiff is a citizen of the State of New Jersey, engaged in that State in the business of a liquor dealer, and seeks now to enjoin the enforcement of the Volstead Act. It is not claimed that that act is invalid if the eighteenth amendment is valid and a part of the Constitution. The validity of the amendment, however, is assailed on various grounds.

The defendants named in the bill are the State of New Jersey, the Attorney General of the United States, the district attorney for the District of New Jersey, and the Internal Revenue Commissioner of the United States. The reason alleged for making these parties defendants is that the amendment provides that the States shall have concurrent power with Congress to enforce the amendment by appropriate legislation, and that under the Volstead Act the duty of enforcing the provisions of that act are imposed upon the Department of Justice and the Commissioner of Internal Revenue.

The controversy is alleged to be one between a citizen of the State of New Jersey, on the one hand, and the State of New Jersey and certain officials of the United States on the other. The prayer is that the Federal officials named be enjoined, either per-

sonally or through their subordinates, agents, or employees, from interfering with the business of the plaintiff as a liquor dealer or using the name or authority of the United States of America or of the State of New Jersey in any proceedings in law or in equity against the plaintiff in any court of the United States or any court of the State of New Jersey on account of any alleged violation of the provisions of the eighteenth amendment or the Volstead Act. There is no prayer for relief against the State of New Jersey, and the only allegation in the bill relating in the remotest degree to any action contemplated by that State is the following:

There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper, and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

II.

Apparently the theory of the bill is that the naming of a State as a defendant gives this court original jurisdiction under the second paragraph of section 2 of Article III of the Constitution, which is as follows:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in

which a State shall be Party, the supreme Court shall have original Jurisdiction.

There are two conclusive answers:

1. The bill does not present any controversy between the plaintiff and the State of New Jersey and prays for no relief against that State.

2. The plaintiff is a citizen of the State of New Jersey, and, consequently, if a controversy existed between him and that State, this court would not have original jurisdiction thereof. Article III, section 2, of the Constitution, in defining the cases to which the judicial power of the United States shall extend, includes within that power controversies "between a State and citizens of another State," but does not include controversies between a State and its own citizens.

As to controversies between a State and citizens of other States, the Eleventh Amendment denies to the United States court jurisdiction where such suit is brought against the State as a defendant. *Hans v. Louisiana*, 134 U. S. 1, 15, et seq.

III.

The real controversy sought to be presented by the bill is one between the plaintiff and officials of the United States Government, who are charged with a purpose to destroy the plaintiff's business under the color of a law which is, in fact, no law. This court is wholly without original jurisdiction over such controversy.

1. If the case be treated as one against the defendants as individuals, it could not be claimed for a

moment that the suit could be commenced in this court. If the controversy is one which would be cognizable in any Federal court, this court, under section 2 of Article III of the Constitution, would have only appellate jurisdiction.

2. If it be treated as, in fact, a suit against the United States, it is equally plain that jurisdiction fails.

(a) A suit by an individual against the United States is not one of the cases in which the section of the Constitution above quoted confers original jurisdiction upon this court.

(b) The United States can not be sued in any court except when it has consented thereto. (*Stanley v. Schwalby*, 162 U. S. 255, 269, 270.) It has not consented to be sued except in the Court of Claims and the District Courts of the United States, as provided in sections 24 (20) and 145 of the Judicial Code.

It is respectfully submitted that, in no possible view of the case, does the bill present a controversy of which this court has original jurisdiction.

ALEX. C. KING,

Solicitor General.

WILLIAM L. FRIERSON,

Assistant Attorney General.

DECEMBER, 1919.